

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Claus Biller et al.
Serial No: 10/599,204
Filed: 9/22/2006
Title: Bag with Lateral Folds
Examiner: Peter N. Helvey
Art Unit: 3782

Commissioner for Patents

Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

ARGUMENTS

Claims 5-7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Totani* (US 2004/0258332) in view of *Wedi et al.* (US 2001/0051008 - *Wedi 0008*) and *Wedi et al.* (US 2003/0210837 - *Wedi 837*). Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the afore mentioned three references and further in view of *Wedi et al.* (US 6,398,412).

Claim 5 claims the seam structure as follows:

- wherein the folded-over end areas each have an inner side where the inner layer of the multi-layer film is folded on itself and fused to itself by a first welding seam (seam 14 in Fig. 2);
- wherein the folded-over end areas each have an outer side where the inner layer of the multi-layer film is facing a neighboring bag wall and is areally fused by a second welding seam (seam 15 in Fig. 2) to said neighboring bag wall, respectively;
- wherein an area of a gusset half neighboring the folded-over end areas, respectively, is areally fused with the inner layer of the multi-layer film facing said neighboring bag wall by a third welding seam (seam 16 in Fig. 2) to said neighboring bag wall, respectively;
- wherein the first, second, and third welding seams form a fused connection in the form of a complete seal in which the top edges are embedded so that the top edges are closed (see Figs. 1 and 3, cross-hatched area).

Examiner argues that *Totani* shows gusseted bag (Fig. 1) of flexible multi-layer film with inner layer being fusible, where the gussets are folded inwardly and downwardly along a slanted

folding line and the inner layer of the folded area is fused to itself (Fig. 5 at 16; first sealing seam). The outer side of the gusset is sealed to the neighboring bag wall with second welding seam along the edge (3) and the inner side of the film is sealed to a wall by third welding seam (notch 17). The welding seams form a fused connection that includes the top edges so that the top edges are closed.

Examiner states that *Totani* does not expressly disclose the top edges oriented as claimed inwardly and downwardly and cites *Wedi 008* as showing a sealed gusset with a double slant as claimed. Examiner refers to complete seal 18 at gusset end portion that provides a larger expandable space due to less material being folded over. According to examiner, it would have been obvious to fold and seal the gusset end portions of *Totani* in the way proposed by *Wedi 008* in order to simplify manufacture, completely seal the gusset end portions, and provide a larger expandable space. In examiner's opinion it would also be obvious as a matter of design choice to shape the folded end to whatever form or shape desired.

Examiner further points out that the proposed modification results in the elimination of the claimed third welding seam (at notch 17) that attaches the inner layer to the back wall neighboring the location of the folded gusset ends (unnecessary due to the seal provided by *Wedi 008*). Examiner refers to *Wedi 837* as teaching sealing of the ends of the gusset portion with welding seams that extend beyond the top of the gusset ends to connect the neighboring layers as well, substantially as claimed in connection with the third welding seam, except that this is not done on a folded over gusset portion. However, extending the seal would improve sealing characteristics.

In examiner's view, it would therefore have been obvious to extend the gusset end seal 18 of the combination *Totani / Wedi 008* beyond the gusset end edges as shown in *Wedi 837* to close the ends of the gusset portions and attach them to neighboring layers (paragraph 0016 of *Wedi 837*) and it would have been obvious to substitute the larger seal of *Wedi 837* for the seal of *Wedi 008* for achieving the predictable result of sealing the gusset ends and improving sealing action.

Applicant submits that, contrary to what examiner states on page 2, last 4 lines, of the office action of 11/9/11, *Totani* does not show that the top edges of the gussets are closed: the top edges of the gussets are open toward the exterior and not fused. The top edges (Fig. 7 at 15 shows that the two layers of material are slightly gaping) are NOT SEALED when the sealing seam 6 is applied (only the area at 17 is sealed). Whether this may be even more motivation to close the edges or not (examiner's remarks on page 5, 2nd paragraph from the bottom, of the office action of 11/09/11), the fact remains that examiner's statement is incorrect.

Totani discloses, aside from the folded arrangement of Figs. 3 and 4 at a 45 degree angle, other folding angles of the gusset end portions (Figs. 6, 7, 8; paragraph 0038). Fact is that *Totani* -

even though variations of the folding angle are shown - teaches that the top edges of the folded portions must be positioned along the outer edge 5 so that the top edges are sealed in the seam 6 that connects the front and rear panels 2 as well as the gussets (paragraph 0038).

The seal of *Wedi 008* - as set forth in the declaration by Mr. Wedi submitted 6/7/11 - is problematic when the material of the gussets is fusible only on one face, as is the case in *Totani*. When looking at Figs. 3 and 4 of *Totani*, the outwardly facing surfaces of the gusset 1 as shown in Figs. 3-4 are sealable but the inwardly folded faces that contact each other are not sealable; see paragraph 0036:

“Each of the side gussets 1 has outer surfaces formed by the sealant and inner surfaces formed by the base material when being folded into halves. The triangular flap 13 has therefore outer surfaces formed by the sealant and inner surfaces formed by the base material.”

This means that the seal 16 in Fig. 5 can be formed between the gusset side 1 and the folded-over portion with the two-layer material of *Totani* but a seal 18 (see paragraph 0017 of *Wedi 008*) where the “two layers of the folded end region 17 are solidly welded to one another by a welding seam that runs along the upper cutting edges of the side gusset halves 13, 14” cannot be formed (note the explanations provided by Mr. Wedi in the declaration submitted 7/19/2011; page 4, lines 17-27) with the arrangement of *Totani* because in *Totani* one layer is fusible and the other is not, i.e., a complete seal 18 as in *Wedi 008* is not possible in *Totani*. A person of skill in the art would therefore not consider the teachings of *Wedi 008* in place of the folded arrangement with sealing action by seam 6 in *Totani* because only the folded-over portion would be “tacked” to the gusset half but the upper edges would not be sealed.

Also, in *Wedi 008* the upper ends of the gussets are not welded or fused to one of the bag walls. As set forth in paragraph 0005:

“According to the invention, this objective is accomplished in that the upper ends of the side gussets are closed by being welded together to themselves and underneath the reclosable device reach freely into the inner space of the bag.”

When applying the teaching of *Wedi 008*, the upper folded-over ends of the gussets would not be attached to any of the bag walls; note that in *Totani* the gussets are attached only by means of the seams 6 to the bag walls and such an attachment would no longer exist if the folded gusset arrangement of *Wedi 008* is used. *Wedi 008* shows no areal attachment to the bag walls.

When the folded gusset of *Wedi 008* is used in place of the folded-over gusset end of *Totani*, then the feature of claim 11 relating to the second welding seam (outer side of the folded over end areas in the area where the inner layer is facing the neighboring bag wall is areally fused

to the bag wall) is no longer fulfilled. By using the weld 18 of *Wedi 008* not only the third welding seam as claimed (examiner's reading: at notch 17 in *Totani*) but also the second welding seam as claimed (examiner's reading: seam 6 of *Totani*) would be eliminated from *Totani*.

There is no suggestion to attach the folded-over end area to the bag wall as *Wedi 008* teaches that the gusset ends should reach freely into the inner space of the bag because this is advantageous and desirable as there is no narrowing of the fill opening (see paragraph 0006 of *Wedi 008*). Examiner argues that this is a simple design choice; but examiner provides no teaching or solution as to how this is to be achieved in a modified gusset arrangement *Totani / Wedi 008*.

In regard to examiner's statement (page 6, 1st full paragraph of office action of 11/9/11) that the double-sided sealable film is known and substitution of a known material for another is within the ordinary skill in the art is beside the point. *Wedi 008* discloses seal 18 being formed with a single-layer material: all sides/faces are fusible to each other and only with such a single-layer fusible material the seal 18 can be formed. When the same type of folded seal 17/18 of *Wedi 008* is applied to the double-layer material of *Totani* where one side is fusible and the other is not, the seal 18 CANNOT BE FORMED (i.e., upper edges sealed to each other and sealed upper edges fused to the gusset wall onto which the upper edges are folded). Seal 18 requires a single-layer fusible material; this means that the seal cannot be applied to the material used in *Totani*: a fusible layer and a non-fusible layer; a single-layer fusible material would have to be used in *Totani* instead of the double-layer material. However, *Totani* and the instant application are specifically directed to solving sealing problems relating to such double-layer material (base material layer and sealant layer) that are not encountered with single-layer material.

The issue is that a person of skill in the art would not use the seal 18 of *Wedi 008* for the type of material used in *Totani* because a seal that seals the upper edges and that fuses the folded-over portion to the gusset material cannot be produced.

In regard to examiner's statement (page 6, 2nd full paragraph of the office action of 11/9/11) that it is simply a design choice whether the gusset ends are sealed to the bag walls, applicant respectfully submits that examiner has argued (last paragraph of page 3 of the office action) that modification by the seal 18 of *Wedi 008* results in the elimination of the claimed third welding seam that attaches the inner layer to the back wall neighboring the location of the folded gusset ends and that such a third welding seam has become unnecessary due to the seal provided by *Wedi 008*.

According to examiner, *Wedi 387* teaches that top edges of gussets are closed by a seam that is formed between the back wall 1a and the flap 9a that are fused to each other; the gusset ends of the gusset 3 are inserted between these two parts 1a, 9a; as the two parts are sealed, the interposed upper edges are sealed, too.

As examiner has explicitly stated that the seam 18 of *Wedi 008* seals completely and eliminates the need for a third welding seam, there is no reason to employ the seal of *Wedi 387*. The seal of *Wedi 387* is provided because the gusset ends are not sealed - but as argued by examiner himself, the seal 18 of *Wedi 008* completely seals the gusset ends and eliminates the need for a third welding seam. Therefore, it is not obvious to apply the welding seam of *Wedi 387* to an already completely sealed gusset end. Moreover, the seam of *Wedi 387* requires that in addition to the gusset material and the rear and front walls/panels an additional sealing material (in the form of the flap) is added to the seam. This is contrary to what is being claimed in instant claim 11. Moreover, *Wedi 008* clearly teaches that it is desired that the sealed gusset ends reach freely into the interior and are not attached to the bag walls so that a person of skill in the art would not be motivated to apply additional sealing material to secure the seal 18 of the modified *Totani* / *Wedi 008* gusset arrangement to the wall panel.

In response to examiner's statement that applicant addresses the references individually and not the combination, it is respectfully submitted that in order to address a combination of references, the features disclosed in the references must be discussed first in order to be able to address reasons for or against combining disclosed features. This is what examiner does in the office action (page 2 addresses *Totani*; pages 3 and 4 address *Wedi 008* and *Wedi 387* and reasons for combining); applicant's arguments are structured in the same way.

It is respectfully submitted that the claims 5 to 8 are therefore not obvious in view of the cited references.

CONCLUSION

In view of the foregoing, it is submitted that this application is not obvious in view of the combination of cited references and the rejections should be withdrawn.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on April 9, 2012,

/Gudrun E. Hockett/

Ms. Gudrun E. Hockett, Ph.D.
Patent Agent, Registration No. 35,747
Schubertstr. 15a
42289 Wuppertal, GERMANY
Telephone: +49-202-257-0371
US-Fax: (877) 470-9712
gudrun.draudt@t-online.de

GEH

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 305282									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10599204		Filed 09/22/2006								
	First Named Inventor Claus Biller et al.										
	Art Unit 3782	Examiner Peter N. Helvey									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding: 5px; text-align: right;">/Gudrun E. Hockett/ _____ Signature</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding: 5px; text-align: right;">Gudrun E. Hockett _____ Typed or printed name</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>35747</u></td><td style="vertical-align: top; padding: 5px; text-align: right;">+49-202-2570371 _____ Telephone number</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top; padding: 5px; text-align: right;">2012-04-09 _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Gudrun E. Hockett/ _____ Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Gudrun E. Hockett _____ Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>35747</u>	+49-202-2570371 _____ Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	2012-04-09 _____ Date
<input type="checkbox"/> applicant/inventor.	/Gudrun E. Hockett/ _____ Signature										
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Gudrun E. Hockett _____ Typed or printed name										
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>35747</u>	+49-202-2570371 _____ Telephone number										
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	2012-04-09 _____ Date										
<input type="checkbox"/> *Total of _____ forms are submitted.											

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.